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A brake on the railroads

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New Jersey rightly is cracking down on the waste transfer depots that are sprouting in train yards from Atlantic County to the Meadowlands, and the state and the railroads are on a collision course for a costly court battle.

Environmental Commissioner Bradley Campbell believes New Jersey has plenty of authority to clamp down on pollution or other problems at the transfer stations, which more and more are being used to ship construction debris to landfills in Ohio and points west. The railroads insist a sweeping federal law gives the state and towns no say.

It isn't quite so simple. Congress years ago gave the federal government almost exclusive power to regulate the railroads -- almost. Towns and states still have a right to protect public health and safety.

That's what Campbell is doing, and he should go full steam ahead, even if it takes a boxcar full of lawyers and many trips to the federal courthouse to prove that health and safety include reducing air and water pollution and even keeping organized crime out of the business of shipping trash by train.

Railroads aren't keen on the state stepping in, and with some reason. Congress wrote the federal law preempting most local regulation because it recognized that, if allowed, towns and states would erect a dizzying array of conflicting rules for the railroads, even perhaps zoning them out of existence. That would derail the free flow of national commerce and damage the country's economy.

But there is a large difference between sham actions to keep trains out of someone's back yard and those aimed at controlling genuine threats to public welfare. National commerce doesn't automatically confer an uncontrolled right to spew clouds of dust or produce streams of dirty runoff, and to hell with the neighbors.

Dust and debris aren't the only things on the minds of local officials in the Meadowlands and elsewhere. They figure if they have to have a transfer station in town, they ought to get the same "host community fee" they would receive from a nonrailroad operation. At a \$1 a ton or so, the fees are a real boost for the local government budget.

Mayors shouldn't get their hopes up. A straight-up fee isn't likely to pass legal muster. A fee isn't crucial for health or safety, no matter how beneficial its effect on the local property tax bill.

Sens. Frank Lautenberg and Jon Corzine and other members of New Jersey's congressional delegation have introduced legislation that would end the debate. The federal pre-emption law would be amended so states and towns could regulate railroad solid waste transfer stations.

This bill won't get out of the station. Not only is Congress not interested in helping a bunch of New Jersey Democrats, but the bill could easily create the very anti-railroad discrimination the federal pre-emption law was designed to avoid.

Hauling construction waste and other materials by train can benefit the public by taking thousands of exhaust-spitting tractor-trailers off New Jersey's chronically congested highways. But the state must be able to ensure it is done with a minimum of pollution or problems at the rail yards.

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